



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Removal of a Sign Owned by
John Becker, d/b/a Becker Sign, Located Along
STH 13, Town of Saratoga, Wood County

Case No. 97-H-1060

FINAL DECISION

By letter dated June 6, 1997, the Department of Transportation issued a removal order for the above-referenced sign. By letter dated July 16, 1997, John Becker requested a hearing to review this order. On November 3, 1997, the Department of Transportation referred this request for hearing to the Division of Hearings and Appeals. Pursuant to due notice a hearing was held on January 20, 1998, in Wisconsin Rapids, Wisconsin before Mark J. Kaiser, Administrative Law Judge.

By letter dated January 21, 1998, the Department of Transportation requested an opportunity to supplement the record to show that Mr. Becker owns two other sign structures in the vicinity of the subject sign. By letter dated January 28, 1998, the attorney for the petitioner responded to the Department's request. For reasons set forth in the "Discussion" section below, it is unnecessary to supplement the record and the request is denied.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows.

John Becker, d/b/a Becker Sign Company, by

Robert V. Kryshak, Attorney
Nash, Podvin, Tuchscherer, Huttenburg, Weymouth & Kryshak, S.C.
170 Third Street North
P. O. Box 997
Wisconsin Rapids, WI 54495-0997

Wisconsin Department of Transportation, by

Barbara Bird, Attorney
Office of General Counsel
P. O. Box 7910
Madison, WI 53707-7910

The Administrative Law Judge issued a proposed decision in this matter on February 23, 1998. No comments on the proposed decision were received. The proposed decision is adopted as the final decision in this matter.

FINDINGS OF FACT

The Administrator finds:

1. John Becker owns Becker Sign Company. Becker Sign Company leased land owned by Al Gilbertson for the purpose of erecting and maintaining an off-premise outdoor advertising sign. The property is located along the east side of State Trunk Highway 13 (STH 13), in the Town of Saratoga, Wood County. The sign was located approximately 690 feet south of the centerline of Church Avenue and was issued permit number 71-40522-93. The location of the sign was near the south border of the Gilbertson property.
2. Trees near the sign began to obstruct the view of the sign. John Becker sought permission from Al Gilbertson to move the sign approximately 300 feet north to a location near the north boundary of the Gilbertson property. By application dated July 15, 1996, Becker Sign Company applied for a sign permit at the new location. The Wisconsin Department of Transportation (Department) issued a permit number 71-40772-96 for the new location. This permit voided and superceded permit number 71-40522-93.
3. The subject sign was erected in August, 1996. It is a two-faced sign. The south facing sign is ten feet high by 24 feet wide and the north facing sign is twelve feet high by 24 feet wide. The south facing side of the sign is leased for a three-year period by Best Western for advertising the Best Western – Rapids Motor Inn.
4. State Trunk Highway 13 is a federal aid primary highway. The sign is located outside of an incorporated area and the area is unzoned. The sign is located within 660 feet of the STH 13 right of way and is intended to be visible from the main-traveled way of STH 13.
5. According to the application the new location is 392 feet south of the centerline of Church Avenue. The replacement sign was erected in August, 1996. At the intersection of STH 13 and Church Avenue, the northbound lanes of STH 13 widen to provide a left turn lane of vehicles turning left onto Church Avenue. The striping for the left turn lane begins approximately at station 308 on the construction diagram of the intersection (Exhibit 5) The current sign is located approximately 25 feet south of station 308.

Section TRANS 201.06(1), Wis. Adm. Code, provides:

Signs visible from the main-traveled way of a controlled highway shall conform to the requirements of s. 84.30 (4), Stats, and to these rules. On non-freeway federal-aid primary highways outside of cities and villages, no sign may be adjacent to or within 300 feet of an interchange, intersection at grade, safety rest area, or wayside. Said 300 feet

shall be measured along the highway from the beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way of the primary highway.

On roads with paved shoulder, the Department uses striping to determine the beginning and ending of pavement widening for purposes of sec. TRANS 201.06(1), Wis. Adm. Code.

6. The subject sign is located less than 300 feet from the beginning of the taper of the intersection of STH 13 with Church Avenue. Accordingly, the sign can not be permitted at this location.

DISCUSSION

At the hearing, the petitioner did not dispute that the subject sign is located within 300 feet of the intersection with Church Avenue, based upon the measurement of the intersection by the Department. Rather, the petitioner argued that he relocated the sign based upon verbal assurances from the Department that he could erect a sign at the current location and the issuance of a permit for that location by the Department. The Department acknowledged that the permit was issued in error and indicated that the Department would reimburse the petitioner for the costs of relocating the sign.

The petitioner further argued that an advertiser had entered into a long term lease for the sign and removal of the sign because of a revocation of the sign permit would constitute a hardship to him. After the hearing the Department requested an opportunity to supplement the record to show that Mr. Becker "owns two other sign structures along STH 13 in close proximity to the sign at issue." The Department argued that the petitioner could move the sign face to one of these other structures and thus maintain the income from the lease for this sign. In his response, the petitioner acknowledged the existence of the other sign structures, but argued that one sign was already fully leased and it is Mr. Becker's intention to have different clients advertise on the other sign structure. The petitioner argued that the hardship he would sustain is the loss of income generated by one sign structure.

Based upon this exchange of correspondence, it is apparent that the petitioner has the ability to fulfill his obligations under the current lease with Best Western; however, removal of the subject sign would eliminate one advertising location for him and cost him the potential income from an additional sign. On one hand, the petitioner is losing potential income by not being able to maintain the subject sign. On the other, he has earned income for approximately one and a half years at this location from a sign which should not have been permitted. It is questionable whether the revocation of the sign permit will result in any hardship to the petitioner.

Even if one found that revoking the permit for the subject sign would constitute a hardship for the petitioner, hardship is not a consideration in determining whether the subject sign is eligible for a permit at the current location. Accordingly, it is immaterial whether the petitioner owns other sign structures in the vicinity of the subject sign on which he could place the Best Western sign face and it is unnecessary to give the Department an opportunity to supplement the record with this evidence. A sign permit can not be issued for an off-premise

advertising sign at the site where the subject sign is located. The permit for the subject sign was issued in error and must be revoked.

CONCLUSIONS OF LAW

The Administrator concludes:

1. The subject sign is located within 300 feet of an intersection. Pursuant to sec. TRANS 201.06(1), Wis. Adm. Code, an off-premise advertising sign can not be permitted at this location.

2. Pursuant to secs. 84.30(18) and 227.43(1)(bg), Wis. Stats., the Division of Hearings and Appeals has the authority to issue the following order.

ORDER

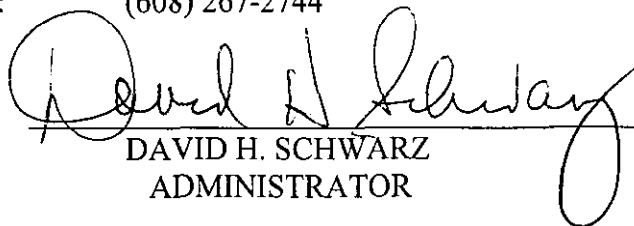
The Administrator orders:

The removal order issued by the Wisconsin Department of Transportation on June 6, 1997, is affirmed.

Dated at Madison, Wisconsin on March 18, 1998.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
FAX: (608) 267-2744

By:



DAVID H. SCHWARZ
ADMINISTRATOR